

Town of Amherst
Zoning Board of Appeals - Special Permit

DECISION

Applicant: Pocket Communications c/o Brian J. Allen
3 Brookside Drive, Sutton, MA 01590

Date application filed with the Town Clerk: October 20, 2008

Nature of request: A Special Permit to modify Special Permit ZBY FY2000-00021 to allow Pocket Communications to co-locate on an existing communications tower and site.

Address: 1352 West Street (Map 25D, Parcel 30, R-LD Zone).

Legal notice: Published on October 29 and November 5, 2008 in the Daily Hampshire Gazette and sent to abutters on October 29, 2008.

Board members: Thomas Simpson, Hilda Greenbaum, Albert Woodhull

Submissions: The petitioner submitted a packet of information with the application including:

- Completed Application form and Management Plan form;
- Owner Authorization Letter, dated October 9, 2008;
- Notification of Spectrum Manager Lease;
- Radio Frequency Engineering Report, dated October 16, 2008;
- A complete set of construction drawings, last dated October 6, 2008;
- A photo simulation packet received on October 23, 2008;
- A Calculated Radio Frequency Emissions Report dated October 22, 2008;
- A copy of a Continuous Removal Bond dated October 20, 2008;
- A copy of a Revised Structural Analysis Report, dated August 15, 2008;
- A copy of the Special Permit ZBA FY2000-00021 for the construction of the tower, Sprint (submitted by staff);
- A copy of the Special Permit ZBA FY2003-0003 for the construction of a structure, Verizon (submitted by staff).

Site Visit: November 12, 2008

Thomas Simpson and Hilda Greenbaum met with the applicant's representative, Brian Allen, at the site (Albert Woodhull viewed the site separately) and observed the following:

- The existing communication tower and associated ground equipment enclosed in a chain link fence on the grounds of the Norwottock Fish and Game Association, Inc., property;

- The existing ground equipment including that of AT&T, Sprint, Verizon & T-Mobile situated within the existing chain link fence;
- The existing equipment, a transformer and meter rack, located outside the existing chain link fence.

Public Hearing: November 13, 2008

The applicant's representative, Brian Allen, presented information related to the application. He stated the following:

- Pocket Communication is a new cell phone carrier seeking to establish service in the area;
- They provide a service similar to other carriers such as AT&T, T-Mobile, Verizon, Sprint at a lower rate;
- They currently have other licenses in the greater Springfield area;
- They currently have no coverage in the area;
- They are proposing to co-locate on an existing tower;
- They will be able to cover and provide coverage over an approximately 3 mile radius;
- They intend to create other sites in the area;
- The basic plan is a month to month;
- The installation would satisfy the overall goal of the Bylaw to co-locate on existing facilities.

Tom Simpson asked the applicant why Pocket Communication chose the location on West Street.

Mr. Allen stated that they currently have no coverage and believed the West Street site to be adequate as it is located on a main road, located on a high spot and will provide good coverage to the area. He added that they also intend to provide service from an existing tower on the UMASS campus.

Mr. Allen stated that the owner of the tower is Crown Castle and they lease the land from the Norwottock Fish and Game Association, Inc. He said that Pocket Communication has a working relationship with Crown Castle nationally, has a lease with them for this site. He added that Crown Castle also owns the tower on the UMASS campus and that the build-out plan for Pocket Communication is to begin by utilizing existing structures to provide service in the area.

Mr. Simpson explained that the Telecommunication Act requires that a carrier identify a gap in service in order to be on a site.

Mr. Allen responded that the Telecommunication Act may have been more specifically intended to provide a burden of proof to ensure that no other existing structures are available in the area. He added that Pocket Communication is seeking to co-locate on the existing structure and that currently they do not have any coverage and that they are not requesting an extension of the tower or expansion of the existing ground equipment area.

Mr. Simpson asked what the proposed antennas look like and where they will be located on the tower.

Mr. Allen stated that the proposed antennas would be located at approximately 110 feet up on the tower. He added that there is an existing carrier located at about 120 feet and they can be placed 10 feet below that. There is also a dish antenna located below where they will go at 110 feet. The existing tower was extended from 140 feet to 152 feet in height as allowed in Condition #4 of ZBA FY2000-00021. The proposed antennas are referred to as panel antennas and they are chain mounted and positioned close to the existing tower.

Mr. Woodhull asked if the pictures accurately show the antennas. The applicant referred to the photo-simulations and reviewed the photos with the Board. He explained that there will be three, close mounted antennas, rather than the eight foot triangular boom mounts.

Mr. Allen stated that the antennas are white, but can be painted any color.

Mr. Simpson asked if there will be any other changes to the site. The applicant responded that the only change to the site will be the addition of the ground equipment. He added that the ground equipment will be the size of a large refrigerator and it will be within the existing chain link fence area. The location of the equipment is shown on the site plan.

Mr. Allen discussed the photo-simulations and stated the photos were taken at locations where the tower could be seen and from highly traveled roads where the tower can't be seen.

Mr. Simpson asked how much traffic will be generated. The applicant responded that during the initial installation, a two to three week process, there will be passenger vehicles and the largest vehicle would be one that carries a large spool of cable, similar to a telephone utility vehicle. After the installation, the site would be visited by a technician in accordance with the management plan, in a small 4x4 vehicle such as an SUV.

Mr. Simpson asked the applicant about the submission of a bond as required by the Bylaw. The applicant stated that the tower owner, Crown Castle, posted a bond for \$30,000 for the removal of all equipment on site and the tower.

Ms. Greenbaum asked the applicant to explain the size and type of equipment to be placed on the ground at the site. The applicant responded that the equipment cabinet will be 3 feet x 4 feet and about 6 feet high on a concrete pad. The cabinet will be same color and material as the other equipment. The ice bridge will similar to the existing material on site, galvanized steel.

Mr. Woodhull stated that he viewed the site and asked the applicant about the antenna size and the coverage maps provided. Mr. Allen explained that the façade mounted antennas suit the need of the company and that the nature of the site on a hill provides enough coverage for the site and that the coverage will be increased by co-locating on other towers in the area.

Mr. Simpson stated two concerns related to the bond submitted. 1) an engineer's certification of the amount of the bond, as required by the Bylaw, was not submitted, and 2) given the current economic trends, is there any evidence that can be submitted showing the financial stability of the company posting the bond.

Mr. Allen responded that he could provide an engineer's certification of the amount of the bond to Town Staff. The applicant agreed to submit information related to the certification of the amount to the bond.

Mr. Simpson asked the applicant if he could get the A.M. BEST rating on the bond company, Westchester Fire Insurance Company. Mr. Allen stated that it may not be appropriate to raise the issue of the bond, because it has already been posted. The applicant also stated that the bond is issued to the owner of the tower and is the bond that would have been posted for the original construction of the tower. He believes that the bond covers the cost associated with the removal of the proposed antenna and asked the Board to waive this requirement.

Ms. Weeks, Building Commissioner, indicated that the applicant could also submit a bond for the removal of Pocket Communication equipment only, instead of the bond for the removal of the entire tower and other structures, as submitted. The applicant was asked to provide an original version of the bond, where a copy was submitted previously.

Mr. Simpson asked the applicant what they provided for emergency power backup. The applicant stated that they have battery backup that is contained within the cabinet itself which is about 4 hours at full capacity. He added that this is usually sufficient in the other markets where they operate.

Ms. Greenbaum asked the applicant if they had considered installing antennas on structures located on municipally owned land. The applicant responded that he had been in communication with the Department of Public Works.

Mr. Simpson then asked if any members of the public would like to speak to the application.

Ronald Jacque, 1260 West Street, asked the Board if there are any health concerns related to the addition of the proposed antenna. Mr. Simpson stated that the Telecommunication Act prevents the Board from considering health issues when deliberating a communication facility.

Mr. Allen indicated that the FCC regulates the maximum permissible exposure levels and that the proposed antenna and the existing tower are below those levels.

Seymour Epstein, 37 Bay Road, stated his concern as to whether the new antenna will be reflective and cause additional glare. He asked whether the antenna could be painted a color to match the general background, such as green, that would eliminate the glint.

Mr. Woodhull stated that from most places, the pole is seen with green vegetation as the background and that perhaps green would reduce the visibility of the antenna.

Ms. Greenbaum stated that a grey matte finish, similar to the color of the pole, may be best to reduce visibility and glare.

Mr. Allen stated that the antennas are designed to be painted and could be painted in a matte finish. He added that they will paint the antenna any color requested by the Board, however, he noted that those that are painted colors different from the gray scale are actually more visible.

Mr. Simpson asked the applicant the approximate life of the antenna. The applicant responded that with existing technology, the antennas are usually used for about 4 years, but this can vary.

Ms. Weeks asked the applicant if an engineer had certified that the tower can support the additional antenna. The applicant responded that they had submitted a structural analysis for review by the Board.

Ms. Greenbaum made a motion to close the public hearing. Mr. Simpson seconded the motion and the Board voted unanimously to close the public hearing.

Public Meeting:

Mr. Simpson asked the Board members if anyone objected in principle to the application. There were no objections.

The Board discussed requiring an engineer's certification of the bond. The applicant stated that Pocket Communication could submit a separate bond for the removal of their equipment only. Mr. Simpson agreed that the applicant could submit a separate bond.

The Board discussed the number of co-locators on the tower. It was noted that Condition #3 of the original permit, ZBA FY2000-00021, allowed for 3 additional co-locators. The Board determined that Section 3.340.2(3)(b) of the Zoning Bylaw allows for at least 3 co-locators and based on submitted information, the tower can support a fourth co-locator in accordance with the Bylaw.

Ms. Greenbaum made a motion to waive the following application requirements, as requested by the applicant, including: landscape plan, lighting plan, soil erosion plan, sign plan, traffic impact statement and outside consultants. Mr. Woodhull seconded the motion and the Board voted unanimously to waive the application requirements.

The Board spent the remainder of the time during the public meeting discussing conditions for granting the Special Permit.

Findings:

The Board finds under Section 10.38 of the Zoning Bylaw, Specific Findings, required of all Special Permits, that:

10.380 and 10.381 – The proposal is suitably located in the neighborhood in which it is proposed and is compatible with existing uses and other uses in the district because the proposed communication antenna is to be located on an existing communication tower.

Additionally, the antenna is small, will be mounted close to the tower and is situated lower on the tower relative to the other carriers.

10.382, 10.383 and 10.385 – The proposal will not constitute a nuisance due to air pollution, lights or visually offensive structures and accessories because the applicant has submitted documentation indicating that the maximum permissible emissions are below those required by the Federal Communication Commission (FCC), there will be no lights associated with the proposed antennas and that the antennas will be painted in a non-reflective, matte finish of a color that is harmonious with the existing tower.

10.384 - Adequate and appropriate facilities will be provided for the proper operation of the communication antenna because no expansion of the ground area is required for the new equipment and the applicant has submitted a Structural Analysis indicating that the tower is capable of supporting the additional antennas.

10.387 – The proposal provides convenient and safe movement within the site and in relation to adjacent property because the facility will only be accessed for inspection by passenger vehicles approximately monthly.

10.391 – The proposal protects, to the extent feasible, unique or important natural, historic or scenic features because the antennas will be painted in a non-reflective, matte finish of a color that is harmonious with the existing tower and the equipment area on the ground is not visible from any neighboring property

10.393 -The proposal provides protection of adjacent properties by minimizing the intrusion of lighting because there is no lighting associated with this application.

10.398 – The proposal is in harmony with the general purpose and intent of the Zoning Bylaw because it promotes the health, safety, convenience and general welfare of the inhabitants of the Town of Amherst.

Public Meeting - Zoning Board Decision:

Ms. Greenbaum made a motion to APPROVE the application with conditions. Mr. Woodhull seconded the motion.

For all the reasons above, the Board VOTED unanimously to grant a Special Permit to Pocket Communications to install a chain mounted wireless communication antenna as the fourth co-locator on the existing communication tower as permitted in ZBA FY2000-00021 and to install necessary equipment on the site under Section 3.340.2 of the Zoning Bylaw, at 1352 West Street (Map 25D, Parcel 30, R-LD Zone), with conditions.

THOMAS SIMPSON

HILDA GREENBAUM

ALBERT WOODHULL

FILED THIS _____ day of _____, 2008 at _____,
in the office of the Amherst Town Clerk _____.
TWENTY-DAY APPEAL period expires, _____ 2008.
NOTICE OF DECISION mailed this _____ day of _____, 2008
to the attached list of addresses by _____, for the Board.
NOTICE OF PERMIT or Variance filed this _____ day of _____, 2008,
in the Hampshire County Registry of Deeds.

Town of Amherst
Zoning Board of Appeals

SPECIAL PERMIT

The Amherst Zoning Board of Appeals hereby grants a Special Permit to Pocket Communications to install a chain mounted wireless communication antenna as the fourth co-locator on an existing communication tower as permitted in ZBA FY2000-00021 and to install necessary equipment on the site under Section 3.340.2 of the Zoning Bylaw, at 1352 West Street (Map 25D, Parcel 30, R-LD Zone), with the following conditions:

1. The antenna (s) shall be painted with a matte, non-reflective finish of a color that is harmonious with the color of the existing tower.
2. Prior to the issuance of a building permit, the applicant shall submit an Engineer's Certification of the removal bond for either their own equipment or the tower bond as submitted with the application, to the Zoning Board of Appeals for review and approval at a Public Meeting.
3. Prior to the issuance of a building permit, the applicant shall submit the A.M. BEST rating of the company providing the bond, to the Zoning Board of Appeals for review and approval at a Public Meeting.
4. The proposed antenna and associated ground equipment shall be built within the existing fence area and according to plans prepared by Dewberry-Goodkind, Inc., issued on October 6, 2008 and stamped approved on November 13, 2008.
5. The proposed antenna and associated ground equipment shall be managed according to the Management Plan stamped approved on November 13, 2008.
6. Any changes to the style, height, or location of the antenna shall be reviewed and approved by the Zoning Board of Appeals at a Public Meeting.
7. All structures associated with the wireless communications shall be removed within one (1) year of cessation of said use and shall be removed in accordance with the bond submitted with this application.

Thomas Simpson, Chair
Amherst Zoning Board of Appeals

DATE